

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TIMOTHY S. MANN,
Plaintiff,

v.

Case No. 06C1237

LISA BAKER,
Defendant.

ORDER

On December 4, 2006, plaintiff, seeking relief under 42 U.S.C. § 1983, was ordered to pay an initial partial filing fee of \$8.20 to the clerk of court within twenty-one days, pursuant to the provisions of the Prison Litigation Reform Act (PLRA). See 28 U.S.C. § 1915(b)(1). On December 12, 2006, after plaintiff complained that he lacked money with which to pay the filing fee, I informed plaintiff that if he could not pay this fee by the deadline, that he could request to proceed without payment of the initial partial filing fee. By letter of December 20, 2006, plaintiff indicated that he continues to be unable to pay the initial fee. To date, plaintiff has not filed such fee.

Prisoner requests to proceed in forma pauperis are governed by 28 U.S.C. § 1915. Pursuant to that section, prisoners are assessed an initial partial filing fee based on a calculation using the average balance of the prisoner's trust account. Id. § 1915 (b)(1)(A-B). However, the section also provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." Id. § 1915(b)(4).

Given this provision, I conclude that plaintiff's case and his pending motion may proceed notwithstanding the lack of the initial partial filing fee. Plaintiff is still required to pay

the full filing fee in increments, according to the formula set forth in § 1915(b); however, I will not allow his lack of funds to delay his case any longer.

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiff Mann is permitted to proceed without payment of his initial partial filing fee.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 2 of January, 2007.

/s _____
LYNN ADELMAN
District Judge